



Paper No. 9

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COPY MAILED**SEP 16 2002****OFFICE OF PETITIONS**

In re Application of
Arviv, et al.
Application No. 09/938,216
Filed: August 24, 2001
Attorney Docket No. 1160
Title: ASYMMETRIC ADAPTIVE
MODULATION IN A WIRELESS
COMMUNICATION SYSTEM

DECISION ACCORDING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the "Request for Reconsideration of
Petition Under 37 CFR 1.47(a)", filed September 4, 2002.

The petition under 37 CFR 1.47(a) is GRANTED.

The above-identified application was filed on August 24, 2001.
On September 28, 2001, applicant was mailed a "Notice to File
Missing Parts of Nonprovisional Application - Filing Date
Granted," requiring, *inter alia*, an executed oath or declaration
and a surcharge for its late filing. This Notice set a two-month
period for reply.

In reply, applicant filed a petition under 37 CFR 1.47(a) on
February 12, 2002 and paid the surcharge for late filing of the
declaration. To make timely this reply, applicant obtained a two
month extension of time and included a Certificate of Mailing
dated January 25, 2002. Accompanying the petition were: (1) a
statement of facts by Ruth Stoffel, describing the efforts to
obtain signatures from inventors Eli Arviv and Penny Efraim; and
(2) copies of cover letters from Stoffel to Arviv and Efraim,
transmitting the application.

However, this petition was dismissed in a decision mailed on May
6, 2002. Petitioner failed to prove that non-signing inventor
Efraim could not be reached after diligent effort.¹ In addition,
petitioner, by not providing the citizenship, mailing address,
and residence of Efraim, failed to submit a declaration in
compliance with 37 CFR 1.63. Lastly, the declaration was not
sufficient because an alteration to the address of inventor

¹ Specifically, petitioner failed to provide a copy of the Federal
Express return slip showing that a package containing the application papers
sent to Efraim was undeliverable.

Gazelle, while initialed, was not dated.²

On renewed petition, petitioner has submitted a declaration executed by Efraim, containing her citizenship, residence, and mailing address. In addition, the alteration to the address of Gazelle on the declaration is initialed and dated.

The declaration filed September 4, 2002 and the petition have been reviewed and found to be in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in 37 CFR 1.47(c), this Office will forward notice of this application's filing to non-signing inventor Eli Arviv at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The \$400 fee for a two month extension of time has been charged to Deposit Account No. 11-1410, as authorized.

The application file is being forwarded to the Office of Initial Patent Examination for continuation of pre-examination processing.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

B. M. Flanagan for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

² See 37 CFR 1.52(c)(1).